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# **The company law**

**For LL.B Students**

**By**

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(Rank holder)**

**With : Import provisions  
and Short Notes**

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## Preface

Company law is very vast and every growing subject. Here in this book basic provisions of the company laws are discussed with a view of LL,B., Syllabus. Most of these enumerated provisions are directly taken from the English law. The strict enforcement of these provisions surely helps to cause healthy competition in the growth of the company.

The chapter like Company, Memorandum of Association, Meeting, Directors, Resolution, Winding up of a company ..... etc. are most important for the students. Some important shortnotes were discussed at the end of the book.

I am immensely happy to the cooperation and encouragement given by the readers for our publications. Before ending my introductory writings once again I congratulate Mr. Yamunacharya LL,B., for his commendable job in bringing this book into your hands.

Wish you good success.

Mysore

Yours,  
**R. Ravishankar**

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## Chapter I

### Company

The companies Act 1956

Definition : It is a association of persons formed for a common object, registered under the companies act 1956.

It is a voluntary association or an organisation of many persons who contribute money or money's worth to a common stock and enploy it in some trade or business and who share loss or profit arising there from. -- Justice lord lindley

#### Features of Company :-

1. It is an artificial person created by law having legal entity, it can sue or be sued in its own name.
2. It has perpetual (permanent) existence, death, insolvency or bankruptcy or the shareholders, does not dissolves the company.
3. It has a common seal for all draments and contracts of the company.
4. Shareholders liability is limited to their share value or the guaranted money.
5. Shareholders can transfer their shares to anybody.
6. The management of the company is flexible as it contains board of Directors and they were subjected to elections.
7. Company must be goveranal by the rules of companies act 1956.

Ex : Memorandum of Association and articles of Association.

## Ex : Memorandum of Association and articles of Association.

Company has a different legal entity when compared to the person:

Case : Solomon v/s Solomon and Company :

Solomon converted his bussiness into a company with a sole intention of taking advantage of limited liability. Solomon held the entire share capital while his wife and 5 children had one share each. At the time of evinding up of the company he claimed priority for payment of his debentures over the other unsecured creditors.

But house of lords held that the company is distinct and separate entity form the person Solomon and he was entitled to such priority over other unsecured creditors.

Company distinguished from partnership firm :

Company	Partnership firm
1. It has distinct legal entity.	1. No distinct entity
2. Liability of members are limited to their amount	2. Liability of members are not limited, and they are equally liable
3. The members of the compny can't be sued for debts of the company	3. Creditor can sue partners either individually or jointly of the firm
4. ownership can not be claimed in case of company.	4. It is a property of partners
5. Members of the company has no binding natures in	5. Binding nature of partner in dealing with Illrd party.

Other kinds of Companies :

**1. Chartered companies** : Created by charter given by king or Queen. Ex : East India Company

**2. Statutory Companies** : Created by parliament. Ex: Reserve Bank of India

**3. Registered Companies** : Registered under companies act 1956.

1. Companies limited by shares
2. Companies limited by guarantee
3. Unlimited Companies
4. Public Companies
5. Private Companies
6. Government Companies

**Lifting the corporate veil :**

The decision given by the house of lords in Solomon case was widely misused by the certain companies. Under the pretext of this precedent many companies covered up their factual errors. In order to avoid and put an end to this precedent, court decided to lift the corporate veil to know the reality and the persons behind the company.

It may be done by following circumstances :

**1. Revenue protection :**

**Case: Sir Dinshaw Maneckji company**

In this case separate and distinct corporate entity is used for evading the tax of the company. In such cases court will lift the corporate veil to determine the residence of company and persons behind the management of the company.

**2. To determine the character of a company :**

It is necessary for the larger interest of public or the

It is necessary for the larger interest of public or the nationality of the person holding the company control.

**case:** Dalmier and Co. Ltd. v/s Continent tyre and rubber Co.

The company was registered in England but it was controled by Germans. Soon war was declared between England and Germany. England court declared that it was an enemy company and disregards the corporate entity.

### **3. When number of memebers falls below statutory minimum :**

Sec 45 of company act lays down that for private company minimum two persons required. For public company minimum seven perosn are required. If such principles are varied, then court can lift the corporate veil on demand of the creditors to look owners share for the satisfaction of the companies act.

### **4. For prevention of Fraud and improper conduct :**

Case : Gilford Motor co., v/s Horne If the co., is incorporated in the Fradulant manner to defraud the creditors, then the court can lift the corporate vein to find the truth.

### **Effect of the Company if it is not registered:**

Such association are called illegal associations.

1. It has no legal entity
2. It can not sue any out sider or any person.
3. It cannot sued by any outsider or amember
4. It can not enter in to any contract
5. Winding up is not possible under the Indian Contract Act.

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## CHAPTER - 2

### PRIVATE COMPANY

1. Here Right to Trasfer its shares are restricted.
2. The number of its members should be limited to fifty only.
3. It prohibits any invitation to the public to subscribe for any shares in or debentures of the company
4. It must atleast have two members.

#### **Restrictions:**

1. It must have two Directors.
2. Company at the end must have words , "PRIVATE LIMITED"
3. It must file with registrar of company and maximum no. of its members should not exced fifty.
4. It must appoint the Qualified Auditors.
5. An auditors report, Balance sheet, details of annual meeting should be reffered to Refistrar.
6. It can not issue share warrant and share transfer is restricted.

### PRIVILEGES OF A PRIVATE COMPANY

1. It can be incorporated by only two members .
2. The certificate of commencement of business need. not required to commence the business.
3. It need not file with the register the list of persons who act as directions.
4. It need not issue prospectus
5. Statutory meeting is not necessary to convey statutory report.
6. Provisional regarding the retirement of directors by rotation need dot apply

need dot apply

7. Restrictons regarding the allotment of shares do not apply

8. It can have its own reles relating to notices of general meeting, election of chairman ....etc.

9. It need not maintain separate index number

10. Shareholders has no right to appeal to the central government, if transfer of shares, refused to be registered.

### When private company becomes public company? :

1. When private company average turnover is not less than Rs. one crore
2. When not les than 2% of its paid up capital is held by one or more bodies corporate.
3. By passing special resolution

### Public company :

It is a company which is not a private company ;

1. It must contain atleast seven memebers, maximum is not limited.
2. Offer shares to public
3. No restrictons on the right of the member in transferring their shares.

### Government company :

1. Central government or state or in combination will held 51% of its paid up share capital.
2. Company which is sbusidiary to government company must be an incorporated company.
3. It should file with register,
  - a. Memorandum of Association
  - b. Articles of Association
  - c. Other statutory needs
4. Audit report should be submitted to conptroller and auditor general

5. Annual reports should be prepared in 3 months prior to the annual meeting to place before both houses of the parliament.

### **Difference b/w Private company and Public company :**

<b>Private company</b>	<b>Public company</b>
1. The minimum number of memebbers is two.	1. The minimum no. of mem-mbers is seven
2. Restricts the right of mem-bers to transfer shares.	2. Does not restricts
3. The maximum number of members is fifty.	3. There is nolimit to maximum number of members
4. It must have atleast two directors.	4. It must have atleast three directors.
5. Certain privilages are enjoyed.	5. No such privilages
6. Company commence buss-iness on incorporation.	6. Must wait for certificate of commencement business
7. It is prohibited from issuing prospectus	7. It can issue prospectus to public for shares.
8. Interested directors must vote on contract.	8. Interested directors can not vote.
9. The directors need not file their consent to act.	9. The directors must file their consent to act as such.
10. There is no restrictions on the managerial renum-eration.	10. The total managerial renum-eration can not exceed 11% of profits. If the profit is in-adequate , it can be paid upto Rs 50,000.
11. It can issue shares dispr-portionate of voting notes	11. It cannot issue shares except in case of preferential shares

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## Chapter III

### Memorandum of Association

Sec 2 (28) defined that The memorandum of association of a company as originally framed or as altered from time to time in prusuarance of any previous companies or of this act.

#### Features :

1. It sets out the constitution of the company.
2. It defines the scope and activity of the company.
3. It gives the foundation structures of the company.

The memorandum must be signed by atleast seven persons in case of public company and it must be signed by atleast two persons in case of Private company.

It must be divided into paragraphs, with numbers and printed. It must be dated and duly stamped. The signature of the members must be attested by persons who are not the signatories themselves to *Memorandum of Association*.

#### Section 13 laid down certain clauses to Memorandum of Association :-

1. Name :i) It should not be identical or similar to the names of other existing company .  
ii) It must contain word *limited* if its public limited or private limited.

**Case :****Atkin and Co. Ltd. v/s Wardle**

In this case officers who entered into the contracts are held as the personally liable, because they have not used the limited word at the end of the company.

**Exemption** : companies formed to promote art, science, culture ...etc. are exempted from adding the word **limited**.

iii) Name must be available on the outside of every office of place of business and even in the bills and notices ....etc.

Name of the state in which the company is situated must be indicated in the clear manner to avoid fraud.

**Outsiders have no right to move against the company.**

**Case :****Eley v/s Positive life insurance company**

It provided in the articles that , Ely, a solicitor should be not be removed except for the misconduct. But he was removed without giving any reason. He sued for breach of conduct, it was held that Eley was an outsider and he can't bind the company contract.

**Alteration of the name of the company :**

1. By special resolution subjected to approval of central government .
2. For change private to public or viceversa the government approval is not necessary.
3. Change of name should be notified to the registrar with clear address.

**The object of Alteration :**

1. To carry out business more economically and more efficiently.
2. To extend their operation
3. To carry out some others incidental business to support basic business,
4. To restrict object of memorandum of Association.
5. To amalgamate with any other company or body of persons.
6. To sell or dispose of the whole or any part of the undertaking of the company.

**Liability :**

Written consent of the members in case of liability to contribute to share capital is increased.

**Alteration of capital :**

Capital of company can be altered by special resolution. It can be increased by ordinary resolution and it can be reduced by special resolution. A certificate copy of court's confirmation must be filed with the registrar.

**Articles of Association :**

These are the rules regulations and bye-laws for the internal management of the company. Memorandum of Association is always accompanied by the articles of association.

They bind the company and its members. These are all filed with the registrar for incorporation of the company. Otherwise rules contained in table A of the companies act shall apply.

It is compulsory for the following :

1. An unlimited company

3. Call on the shares
4. Transfer and transmission of shares
5. Forfeiture and re-issue of forfeited shares
6. Conversion of shares into stock and re-conversion of stock into shares
7. Rules regarding the holding and conduction of the general meeting and board meetings.
8. Rules regarding the appointment of directors, agents, secretaries and treasurers. Managing director, secretary and their remunerations, powers, duties.....etc.
9. List of persons who act as directors.
10. The consent of directors who acts as such.
11. Alteration of share capital, account and audit, common seal under taking powers of directors ..... etc. Articles of Association must not contain anything inconsistent with the memorandum :
12. The managing agency or secretaries of treasurers agreement, if any.
13. A declaration by an advocate.

### Effect of memorandum of association and articles of Association :

#### Cases :

#### Bradford Co. v/s Briggs

Articles of the company shall have effect on the shares of the members. Briggs a shareholder deposited his shares in the bank as a security to an overdraft. It was held that bank has no priority over the company in respect of debts owned by the shareholder.

#### Borland v/s Steel Bros & Co.

According to the articles of the company shares of a bankrupt is to be transferred to a specific person at a specific price.

It was held that trustee in bankruptcy could not sell them to any body the like.

### Burland v/s Earle :

In this case it was held that the company alone has right to sue for any wrong done to the company or money, due to the company.

No member can sue each other because they were binded by the memorandum of Association and articles of Association. It is only the company that has the right to sue in case of breach or articles.

### Alteration of the Article of Association :

Section 31 of companies act empowers to alterate Articles of Association but the alternation must be bonafide. It must not have the intention of deceit or fraud. It should benefit to the company as a whole. It must not result in breach of contract with an outsider. it can be effected by passing a special resolution and within the 15 days of its passing, it should be sent to the registrar. Printed copy of altered article of association must be filed with registrar, within three months of the passing of the special resolution.

### **Distinction b/w Memorandum of Association and Articles of Association:**

#### MoA

1. It defines the constitution of the company.
2. Subordinate to companies act.

#### AoA

1. It defines the intermanagement of the company.
2. Subordinate to memorandum of the company.

- |   |   |
|---|---|
| <p>3. It is the compulsory needed to company</p> <p>4. Not easy to alter only in the manner prescribed in the prescribed in the companies act.</p> <p>5. Govt. approval is required</p> <p>6. Anything ultravires to MoA is void and can't be ratified.</p> <p>7. Table B is the model form</p> | <p>3. Compulsory for<br/>i) Unlimited. companies<br/>ii) companies limited by guarantee , iii) Private company.</p> <p>4. Altered by passing a special resolution</p> <p>5. No such requirement except converting public to private.</p> <p>6. It can be ratified</p> <p>7. Table is A is the model form.</p> |
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## Chapter IV

### Promoter

A promoter is one who assume the primary responsibility of doing all or any of the things necessary for the incorporation of the company.

He is one who undertakes to form a company with reference to its object. He performs various duties and sets in motion the machinery for the incorporation of a company.

#### **Duties :**

1. He has to discover the idea or proposition for a profitable business.
2. He has to assemble all the factors, for commercialisation of the idea.
3. He has to enter into the contracts, with others.
4. He has to sell or present the proposition to those who comply the legal formalities for its incorporation and offer shares to the public for subscription.
5. He has to prepare the memorandum and articles and incur preliminary expenses.
6. It is his duty to prepare prospectus and to advertise.

#### **Position and liability of a promotor :**

1. Legally he is neither a trustee nor an agent
2. He stands in the fiduciary relation to the company.
3. He has to enter into preliminary contracts before incorporation, but it must be confirmed by the board after incorporation of the

4. He must act in good faith and can not make any secret profits.
5. He must submit true and correct account of the company's affairs.
6. He is under an obligation to disclose fully, all material fact relating to incorporation.

A promoter is entitled to remuneration for the services he renders. He may receive such remuneration in the form of a lumpsum money or in the form of shares allotted by the company or in the form of commission on shares sold by him. He may also sell the company at a profit.

If he acquires the property with a view to sell to a company. He must disclose the fact that he is selling the property to the company at a profit. He need not then account for such profits. But when he acquires the property for the company, he must account it.

### **Prospectus :**

Section 2(36) defines that, any document described or issued is a prospectus and includes any prospectus, notice, circular , advertisement or other document inviting the deposits from the public for the subscription or purchase of any shares in or debentures of a body corporate.

Company issues the prospectus or in lieu of prospectus only when it invites the public for the subscription of shares or debentures.

### **Contents :**

1. The given details about the main object of the company.
2. Nature of shares and extent of interest given by the company out of profit.

out of profit.

3. All the particulars about debentures
4. Particular regarding the authorities of the company, directors, managing agents, secretaries and treasures etc.
5. Minimum subscription
6. Time of opening of subscription lists
7. The amount or estimated amount of preliminary expenses
8. Particulars regarding purchase of property.
9. Particular of premium or commission
10. Details of reserves capitalised
11. Report of auditors
12. Particulars of Auditors
13. Particulars of interest of directors
14. Names and addresses of the auditors
15. The right of voting at meeting of the company and restrictions of any.

1. Report by a auditor in respect of profits and losses and assets and liabilities of the company and rates of dividend must be set out in the prospectus.

2. A report of accounts, in respect of profits or losses of the business for each of the five financial years must be set out in the prospectus.

The prospectus must be true and correct other wise company can be subjected to the civil liability and compensation must be given for the loss the person who incurred loss.

Further sec.63 imposes the criminal liability, for prospectus containing false or untrue statements is punishable with imprisonment extending upto two years or a fine of Rs.5000 or both. The prospectus should not conceal any material facts.

A person induces another person to purchase shares or debentures which is false is also punishable with imprisonment for a term extending upto 5 years or with a fine upto Rs.10,000 or with both.

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## **Chapter V**

### **Member of a Company**

Membership can be taken by following ways,

**1. By subscription :**

Subscribing to Memorandum of Association before the company is registered and agreeing to take shares.

**2. Obtaining shares :**

By applying for shares in the company and obtaining an allotment of the same in his favour and getting his name entered into the register of members.

**3. By taking transferring shares :**

By taking shares being transferred to him and getting his name entered in the register of members.

**4. By succeeding :**

When the estate of deceased member or a bankrupt succeeded.

**5. Estopped :**

person remains in the register of members even though his name is wrongfully entered in the register of members.

**6. Share warrant delivery :**

By delivering the share warrants to the company in exchange for share certificate

**Who can become member :**

1. A foreigner
2. Insolvent
3. married woman
4. Corporation

**Who can not become members**

1. An infant
2. Lunatic
3. Fish

**When membership ceases :**

1. By transferring the shares to another
2. By surrounding the shares or forfeiting the shares
3. As a right when company sells the shares
4. Death
5. Contract of members on changes of fraud or misrepresentation.
6. By exchanging shares with share warrants payable to bearer.
7. Insolvency
8. When company wound up

**Liability of Members :**

1. For company limited by shares, he is liable to the extent of the unpaid balance of the shares held by him.
2. For company limited by guarantee he is liable to the extent of the amount guaranteed to be paid by him
3. For company unlimited liability, he is liable to the full debts of the company contracted by the company during the period of membership.

membership.

### **Distinction between a share holder and Membership**

#### **Shareholder**

1. A share warrant holder is a share holder
2. Legal representative of a deceased member is a shareholder
3. Only the share warrant holder is a share holder whther he is a member or not.

#### **Membership**

1. A sharewarrant holder is not a share holder and his name is not entered in the register of members
2. The legal representative of a deceased member is not a member until his name apperrs on the register of members.
3. A member does not include every share holder.

## Chapter VI

### Shares

Shares are allotted to the applied persons, according to the terms of the agreement of the company. Allotment of the shares must be communicated to the allottees. The allotment must be made by the board of directors within 120 days after the prospectus is first issued.

#### Conditions :

1. Company must receive at least 5 % of face value of shares
2. A copy of the prospectus or a statement in lieu of prospectus duly signed and dated and it must be filed with the registrar.
3. Allotment must be made within 120 days after the prospectus is first issued.
4. Prospectus must deal with the applications, with clear details of the permission to be obtained.

#### Procedure :

The board of directors is at liberty to allot shares to the applicants. A board meeting will be convened, and chairman initials every allotment sheet and signs at the end of the list. After passing the resolutions, it is the duty of secretary to send information to the allottees.

The excess application money must be refunded. The necessary details are entered into the register of members and within three months of allotment, share certificates are completed and made ready for despatch.

## Shares and its kinds :

Section 2(46) defines a share as *A share in the share capital of a company and includes stock, except where a distinction between stock and shares is expressed or implied.*

Basically there are two kinds :

- a. Preference shares
- b. Equity shares

### Preference shares :

It has preferential right for dividends and for repayment of capital.

a) Cumulative preference share : It depend upon the profit of a company. The percentage of the dividends are fixed. For insufficient profit of the company, the profit of the subsequent year is considered for arrears of dividend.

b) Non-cumulative Preference share : though it is similar to cumulative preference shares, the arrears of the dividend is not considered and it is not cumulative.

c) Participating preference share : It gives right to the holder of those shares to participate in the surplus assets of the company.

d) Redeemable preference shares : it can be redeemable or repayable by the company, at any time before the company is wound up.

## 2. Equity shares :

The holder of these shares are entitled to such rate of dividend as recommended by directors and declared in the annual general meeting. They receive such dividend after the preference shareholders are paid their dividends.

Besides these two there is one more type of shares are seen, that is deferred or Founder's shares. These shares are generally given to promoters in recognising their services rendered to the company.

### **Voting Rights :**

Every equity shareholder has a right to take part in the annual meeting and to vote on every resolution.

Equity shareholders are given full voting rights, but preference shareholders, however, are given qualified voting rights. They can vote only to resolutions places before the company which directly affect the rights attached to such preference shares.

Section 87(1) provides that , the voting rights of a shareholder on a poll must now be in proportion to his share of the paid up equity capital of the company.

sec 88 prohibits the issue of any shares carrying voting rights or rights in the company as to dividend or capital or otherwise whcih are disproportionate to the rights attaching to the holders of other shares.

Second 89 terminates the disproportionate voting rights in all the existing companies from 1st April 1957. Rights of the shareholders can be altered with the provisions of memorandum of association and articles of association. It is done with the consent of share holders of not less than  $\frac{3}{4}$ th of issued shares or thro' special resolution of not less than  $\frac{3}{4}$  th of the issued shares at seperate meeting. The court may confirm or disallw such variations. The court is finalThe court order must be filed to the registrar within 15days of its passing.

**Call :**

A call may defined as a demand by the company on the holders of its shares, to pay the whole or part of the unpaid balance at any time during the continuance of the company or during winding up of the company.

**Two Kinds :****1. Calls payable by shareholders :**

For the company's unpaid portion of the nominal value of the shares held by them.

**2. Calls payable by contributories :**

But payable in several instalments are not regarded as calls.

**Rules :**

1. Directors have power to make calls
2. Each call should not exceed  $\frac{1}{4}$ th of the nominal value of the share.
3. The interval between any two calls should not be less than one month.
4. A notice of at least 14 days must be given to each calls.,
5. A call may be revoked or postponed at the discretion of the board of directors.
6. Where a share is jointly held by two or more persons, they are all jointly and severally liable to pay calls
7. A member who pays calls in advance has no voting rights in respect of the amount paid in advance.

8. The directors may receive calls in advance, if such payments utilized for the purposes of the company.

Shares can be forfeited for the following reasons :

1. For non payments of calls
2. For amending the articles

Those forfeited shares can be cancelled or re-issued.

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## Chapter VII

### Debenture

It is an instrument in writing issued by a company under its seal, acknowledging a debt for a named sum of money and giving an undertaking to repay that sum on or after a fixed future date and meanwhile, to pay interest there on at a certain rate per annum at stated intervals.

#### **Kinds :**

##### 1. Registered debentures :

- a. These are transferable debentures
- b. They are not negotiable instruments of credit
- c. Interest is payable to the registered holders of these debentures through interest warrants.

##### 2. Bearer debentures :

- a. These are called bearer bonds
- b. These are negotiable instruments and transferable by delivery.
- c. Interest is payable thro' the interest coupons

##### 3. Secured debentures :

- a. Charge may be created on the fixed assets of the company called specific charges.
- b. Charge may be created on floating assets of the company called floating charges.

##### 4. Unsecured debentures :

- a. These are mere acknowledgements of the debts by the

- b. These are not secured by any charge on the property of the company, except the general solvency of the company.

### 5. Redeemable debentures :

These are redeemable after a certain period or a certain future date.

### 6. Irredeemable debentures :

- a. It is due to the event of liquidation of the company.
- b. on a serious default
- c. the time for their redemption is not fixed.

### **Rights of Debenture holder :**

1. He can sue company in case of its default for breach of contract.
2. He can apply to court for winding up of the company
3. Secured debenture holders can secure the post of receiver or manager of the company.
4. Secured debentures holders can sell and distribute their property, if trust deed permits then to do so.

### **Distinction b/w a shareholder and a debenture holder :**

Share holder	Debenture holder
1. Proprietor of the company.	1. Creditor of the company
2. Dividend can be claimed.	2. only interest can be claimed
3. Entitled to attend meetings and vote.	3. He has no such right
4. In case of winding up of a company, the refund of the capital can be claimed.	4. he has prior claim for the refund of capital

**Redemption of Debentures :**

1. By giving notice
2. By annual instalments
3. By purchasing them in open market at the market rate.

**Borrowing powers of the company :**

1. This power is exercised by the board of directors
2. The amount borrowed shall not exceed the aggregate of the paid up capital.
3. Every trading company has implied power to borrow. But non-trading company can not borrow unless it is expressly allowed in the memorandum of association.

**Ultravires borrowing :**

1. When company borrows money exceeding its powers.
2. But if borrowing is ultravires the article but intravires the memorandum, it can be ratified by passing a resolution as per articles at the general meeting.

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## **Chapter VIII**

### **Resolutions**

**Business of the company can be transact by two kinds.**

1. Ordinary Resolution
2. Special Resolution

#### **Ordinary Resolution:**

It is passed in the General meeting, when the votes cast in favour of resolutions, exceed the votes cast against the resolution by members so entitled and voting

#### **Circumstances of ordinary resolutions**

1. Rectification of the name of the company
2. Issue of shares at a distance
3. Alteration of share capitol
4. Appointment and remuneration of auditors
5. Approval of statutory report
6. Election of directors
7. Declaration of dividends
8. Variation of managing agency agreement.
9. Adoption of director's report, balance sheet, profit and loss account etc.

#### **Special resolutions :**

1. when notice calling the general meeting
2. The votes cast in favour of the resolution are not less than three times the number of votes cast against the resolution by members so entitled and voting.

The copy of special resolution along with a copy of statement passed in the meeting is printed or typewritten and duly certified by the officer of company and finally filed to the registrar within 30 days of the passing of the resolution.

**Circumstances:**

1. Change of name by the company
2. Alteration of articles
3. Reduction of capital
4. Payment of interest out of capital
5. To remove managing agent for gross negligence.
6. Appointment of inspectors to investigate the company's affairs
7. Appointment of managing agents as buying agent for the company.
8. Appointment of managing agents as selling agent for the goods produced or manufactured by the company, etc.

Special notice of 28 days required for following resolutions :

1. For appointment of auditor
2. For appointment of a person who is connected with the managing agent as a director.
3. For removal of directors.

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## Chapter IX

### Meetings

There are two categories

1. *General meeting*
2. *Class meeting*

**General meeting** includes :

- a. Statutory meeting
- b. Annual general meetings

3. *extraordinary General meetings*

#### Statutory meeting :

1. It is not applicable to the private company
2. It is to be held within a period of not less than one month and not more than six months from the date of commencement of the business.
3. Statutory reports must be sent by the board at least 21 days before the date of the meeting

#### Statutory report includes,

1. The total number of shares allotted and the cash received in respect of that.
2. All the details of accounts
3. The name, address and occupations of directors, auditors managers .... etc.
4. Details of the contracts of the company
5. Any commission or brokerage paid to sharesor debentures or manager.

manager.

6. This report must be signed by two directors, one of whom must be managing director.
7. It must be certified by Auditor.

### **Annual meeting :**

1. It is compulsory for all company to hold general meetings in each year.
2. It must be held within 18 months of the incorporation and subsequently within 15 months of each other.
3. Registrar permission is necessary for extension of time.
4. There should not be elapse of more than fifteen months between two annual general meetings.
5. In case of Government company it is central government, who has power to extend for time.

### **Requirements :**

1. Annual general meeting should be held during business hours, on a day other than the holiday
2. Meeting must be conducted either at the registered office or at some other place at hte stipulated

It is not possible to hold a general meeting, than central Government had given the power to company law board to order for meeting, either by Suo motto or by the applpications of Directors or members

Presence of only one member or his proxy shall be deemed to contitute a meeting .

### **Extraordinary General Meetings :**

1. It is the meeting of members done by requisition
2. Company law board must convene an extraordinary meeting on the requisition of the members.

3. Members must hold not less than  $1/10$ th of the paid up share capital carrying voting rights or  $1/10$ th of total voting power.
4. If directors of the company do not convene the meeting within 21 days from the date of requisition then members held meeting, but the meeting should not be held later than three months from the date of deposit of the requisition.
5. All the documents pertaining to the meeting must be duly signed by one or more requisitionists and deposited at the registered office of the company.

### **Quorum of the meeting :**

Quorum is the minimum members required to attend a meeting. In case of public company, five members must personally present. In case of private company two members must personally present.

### **Provisions :**

1. Members should assemble within half an hour from the time appointed for the meeting. If there is no quorum means, meeting will be dissolved.
2. Meeting will stand adjourned to the same day in the next week at the same time and place or such other day as board decides.
- 3 If quorum is not present even in the adjourned meeting, after the half an hour it is deemed the members present as quorum.

In case of Board meetings, the quorum is  $1/3$ rd of the total strength or two directions, which ever is higher.

### **Class meetings :**

This meeting is held by particular class of shareholders, when their rights are varied to their detriment.

**Board meeting :**

This meeting is to be held once in every three months so that there are atleast 4 meetings in every year. It is involved by directors to discuss the affairs to the company.

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## Chapter X

### Director

Section 303 lays down that any person in accordance with those directions or instructions, the board of directors of a company is accustomed to act, shall be deemed to be a director of the company. only an individual can be appointed as a director. He is not a member of the board unless he is duly appointed.

#### Appointment of Directors :

1. They were named by the articles of Association of the company or they must determined by the subscribers of memorandum of association or all the subscribers of the memorandum shall be deemed to the first directors of the company.
2. As per section 255,  $\frac{1}{3}$ rd of the directors can be appointed permanently, and remaining  $\frac{2}{3}$ rd are temporary of these only  $\frac{1}{3}$ rd are liable to retire.

At any general meeting , new directors are appointed . In general meeting provision is also made to re-appointment of retiring directors

Directors are retired by rotation by considering their long service in the office.

3. a. Under sec.260, additional directors can be appointed by the board of directors, but it should not exceed the maximum fixed by the article.

b. Under sec. 262, director is appointed to the place of vacant director, in such case new director can hold office as if it had not been vacated.

c. under section 313, alternative directors are appointed in the absence of original director for the period more than 3 months, as per the articles of the company.

4. Sometimes persons like debenture holders or financial corporation or banking company can appoint their nominees to the board.

5. Managing agents can appoint directors. They can appoint two directors if total number of directors exceeds five and one director when total number does not exceed five.

6.  $\frac{2}{3}$ rd of the total number of the directors of a public company appointed on the principle of proportional representation

7. Central government had a power to appoint not more than two directors for a period not exceeding three years. it may appoint on its own or by the application of not less than 100 member or not less than  $\frac{1}{10}$ th of the total voting power.

However, they can be removed and replaced by the central government.

### **Disqualification for the director :**

1. If he is unsound mind
2. He is an undischarged insolvent
3. If he has been convicted and imprisoned for not less than six months, and a period of five years has not elapsed from the date of expiry of imprisonment.
4. where he has not paid any call made on shares held by him

**Removal of Director :**

1. By ordinary resolution
2. By central government
3. Special notice is issued to every member, or it should be read out at the meeting.
4. Director who is so removed shall not be deprived of any compensation or damages.

**Position of Director :**

Directors as agents : He is a elected representative of share holders, termed as agents of the company.

Directors as employees : He can become employee of the company by entering in to contract of service with it.

Directors as Officers : They were like any othere officers subjected to certain penalties.

Directors as Trustees : They had control over the money assets and other properties. They stand in a fiduciarry position. But the ownership is not vested in him. They can not be called stictly trustees.

Directors as Proprietors : They hold certain shares in the company . They are just like Managing Partners. They own as well as Manage the affairs of the company.

**Powers and Duties of the Directors****A. Statutory Powers**

1. To sell, lease or dispose of the whole or substantially the whole of undertaking.
2. To remit or give time for the repayment of any debt due by a director.
3. To borrow money in execes of the aggregate of the paid up capital.
4. To invest for compulsory acquisition of any undertakings

4. To invest for compulsory acquisition of any undertakings
5. To contribute to charitable and other funds not relating to the company affairs or the welfare of the employees.

### **B. Managing powers :**

1. Board of Directors can purchase land and building etc.,
2. They can recommend the rate of dividend to be declared at the annual meeting.
3. They can decide upon the issue of additional shares and debentures to increase the resources.
4. They can formulate the major policies and determine the organisational structure and make up the chief appointment.

### **Duties of the Directors :**

1. To see that the statutory books and to account books are properly kept.
2. To see that various classes of meetings are properly convened.
3. To file with the registrar, the necessary documents.
4. To sign bill or Cheques.
5. To disclose the interest of contract.
6. Not to pay dividend out of capital.
7. Not to borrow from company, without the consent of the central govt.
8. To give a notice to the company disclosing his shares holding in the company.
9. To hold qualified shares
10. To send the notice of conversion of shares
11. To send copies of special resolution to the registrar
12. To see that the share certificate and share warrants are made ready for delivery.
13. To submit statement of affairs during winding up of the company.
14. To manage the affairs of the company efficiently.
15. Not to delegate or assign their duties unless authorised by the

## Chapter XI

### Winding up of the company

It is a proceeding by which a company is dissolved and company assets are realised and the debts paid. Extra money if remained even after full filling the debts are paid to contributories.

#### Who can apply for winding up or Liquidation of a Company?

Under section 439, the following persons can apply ,

##### 1. Petition by company :

After passing a special resolution, its directors can present petition to the court for the said purpose.

##### 2. Petition by creditors :

If company fails to pay undisputed debt of the creditor within 3 weeks, then creditor can demand for liquidation of the company. However court can refuse to order the winding up, if the majority of creditors object.

##### 3. Petition by a contributory :

a. If he had his shares for atleast 6 months during the 18 months proceeding the petition.

b. When shares in respect of which he is contributory, are originally allotted to him.

c. When the shares have devalued on him through the death of a former holder, i.e. by transmission.

d. When number of members are reduced below seven in the case of a public company and two in the case of private company.

In case of petition by a contributory, the court is not bound to pass an order of winding up.

#### 4. Petition by the Registrar :

- a. For defects in the statutory report.
- b. If the company fails to commence its business within one year from the date of its incorporation or suspends its business for one year.

#### Creditors voluntary winding up :

1. The company must call for a meeting of the creditors
2. The notice of meeting must be advertised.
3. Director should disclose the affairs of the company
4. Copy of the meeting must be filed with the registrar within ten days of its passing.
5. A liquidator may be nominated by the members and the creditors at the meeting.
6. The committee of inspection consisting not more than five persons must be formed.
7. All powers of the directors will come to an end after the appointment of liquidator.
8. Liquidator takes the responsibility to wind up.

#### Members voluntary winding up :

Board of Directors in an affidavit stating that the company will be able to pay its debts in full, within 3 years from the commencement of the winding up . It must be supported by the Auditor's report and filed with the registrar. It must be made within five weeks before the passing of the resolution.

#### Procedure :

1. The company in general meeting appoint one or more

2. Liquidator must call a meeting of the company at the end of each year and give detailed accounts of the company.
3. Company's property is disposed to paid up debts.
4. Company shall be deemed to be dissolved on the expiration of three months from the registration of the return.
5. If the numbers are reduced in the case of public company, below seven and in the case of a private company below two.
6. If the company is unable to pay its debts.
7. If the court thinks that it is just and equitable that the company should be wound up.

#### **Voluntary winding up :**

1. When the period fixed for the duration of the company by its articles has come to an end.
2. When company passed an ordinary resolution to wind up the company voluntarily.
3. Such resolution must be advertised in the official gazette and local newspapers within 15 days of its passing.
4. If company is unable to pay its debts.
5. If the membership of the company is reduced below 7 in case of a public company and two in case of a private company.

Court orders for the petition to be advertised and hear the company authorities. If it orders for winding up of the company, a liquidator will be appointed to realise the assets and to pay the debts out of that.

### **Compulsory winding up :**

1. By a special resolution, resolved that the company be wound up by the court.
2. By default in the statutory report.
3. When company fails to commence its business within a year from its incorporation or suspends its business for a whole year.

### **Liquidators Powers and Duties :**

It is the court which appoints one or more liquidator to conduct the proceedings in winding up of a company.

### **Powers of the liquidator in compulsory winding up :**

1. He can institute legal proceedings or defend any suit in the name of the company.
2. To obtain necessary books, papers and other documents of the company.
3. To carry out business of the company for favourable winding up.
4. To execute documents and deed under seal on behalf of the company.
5. To borrow money on the security of the assets of the company.

6. To prove the insolvency of the contributors
7. To dispose movable and immovable properties of the company.
8. To do all the necessary things for the purpose of winding up and distribution of assets of the company.

#### Duties of Liquidator in compulsory winding up :

1. To possession of documents
2. To give directions for conducting general meeting.
3. To apply any directions of the court.
4. To use his discretion in the sale or disposal of assets and their distribution.
5. To maintain books of proceedings of meetings for inspection.
6. Accounts should be present before the court twice a year.

#### **Powers of liquidator in voluntary winding up :**

1. To execute the documents and debts under the seal on behalf of the company.
2. To prove in the insolvency of a contributors.
3. To borrow money on behalf of the company.
4. To determine the list of creditors and make necessary calls.
5. To call meeting of the company.
6. To exercise all the powers of the official liquidator.

## 6. To exercise all the powers of the official liquidator.

### Duties of the liquidator in voluntary winding up :

1. To verify the resolution of winding up and about the copy of that given to registrar.
2. To call meetings for the creditors and to give advertisement in the local newspaper within 21 days of his appointment.
3. To obtain possession of the assets of the company.
4. To make lists of debts and claims.
5. To dispose the assets in best practicable manner.
6. To convene general body meeting.

### Liabilities of the liquidator :

1. In case of his default to pay any amount into company, at the rate of 12% interest has to pay.
2. He is liable for misfeasance.
3. He is liable for his negligent performance.
4. His remuneration is disallowed and his service is dispensed, if court wind up of the company under supervision.

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## Short Notes :

### Doctrine of Ultravires :

The word **Ultravires** means **beyond one's power**. Any act of ultravires is improper and null and void.

### Case : Ashbury Railway case :

Here company is formed for the purpose of making and selling of the railway carriage. But it purchased a concession for erecting a railway. Held it was a ultravires.

### Exceptions :

1. The shareholders can ratify an act which is ultravires the powers of the directors only.
2. An act which ultravires the articles can be rectified by altering the articles.
3. The properties obtained by ultravires expenditure can be protected by the company.
4. If the right independently arises, they are not affected though the act is ultravires.
5. Company can sue a person who borrows money from the company under a contract which is ultravires.
6. When the company enters into a contract which is ultravires, from a person such person can bring injunction.
7. Directors are personally liable to a person who lends money under a contract which is ultravires.
8. Directors are held liable for any payments to any person which is ultravires.

## Doctrine of constructive notice :

It is presumed that every person who deals with the company is deemed to have known the contents of the both the *memorandum of Association* and *Articles of Association* in their proper sense. This assumption is known as **Doctrine of constructive Notice**.

### Cases :

#### Mohany v/s East Holyfords Mining Company :

In this case articles of the company clearly provides that the Bill of exchange must be signed by two directors. Person who enters with the transaction of the company must be deemed to have known it. A person who holds the Bill of exchange with a signature of one director cannot plead. He must know the powers of the company before making any transactions.

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## Doctrine of Indoor Management :

It is with respect to internal proceedings of the company. Members of the public dealing with the company are entitled to assume that such proceedings have been conducted regularly. This doctrine is called **Doctrine of Indoor Management**.

### Cases : 1. The Royal British Bank v/s Turquand :

The directors are entitled to issue bonds after passing proper resolution. But the directors issued a bond to Turquand without passing any resolutions. Later he contended for not passing resolutions. Held it was assumed of passing resolution.

### 2. Biggerstaff v/s Rowatt's Wharf limited :

Where company is bound to appoint a managing director by contract. But he had never been formally appointed as such.

**Transfer of shares :**

A share of one person can be transferred to another person, since share is movable property. But it is not negotiable and can not be transferred by mere delivery.

Section 82 provides statutory right to transfer shares *The shares or other interest of any member in a company shall be movable property, transferable in the manner provided by the articles of the company.*

Section 108 (B) lays down that, *before transferrign shares, an intimation of ist proposal to transfer shares shall be given to central government. This applied only to body corporate holding 10% or more of the subscribed equity capital of another company.*

Section 108 (C) is *applied share capital of foreign.*

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**Provisions regarding the transfer if shares :**

1. The transferor or transferee can apply for transfer of shares.
2. A proper instrument of transfer duly stamped and executed by or on behalf of both transferor and transferee must be delilvered to the company along with share certificate.
3. If the company decides not to register, its refusal letter should be sent to both transferror and transferee within 2 months.
4. When the company refuses to register the transfer, the transferor or transferee can appeal by means of a petition in writing to central government, after hearing it passes orders the company must give effect to the orders passed by central government within 10 days of its receipt.

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**Reason for the refusal :**

The refusal must be bonafide and in the interest of the company.

1. When the instrument of transfer is not in the prescribed form or is incomplete or defective or irregular.
2. When directors do not approve the transferee to whom the partly paid shares are to be transferred.
3. When partly paid shares are to be transferred to minor.
4. When the company has lien on the shares.
5. When there is dues in respect of calls on the shares to be transferred.
6. or any other just and equitable ground.

Note : If shareholder dies testate, the shares property passes to the executors. If share holder dies intestate, the property passes to the administrators appointed by the court.

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**Difference between transfer and Transmission :**

Transfer	Transmission
1. The transferor voluntarily surrenders his rights in favour of transferee.	1. Property in shares passes to transferee by operation of law
2. It may take place generally.	2. It is due to happening of certain events like death lunacy or bankruptcy.
3. An instrument of transfer, duly stamped, must be executed by the transferor and transferee.	3. No such instrument of transfer is necessary.
4. It is supported by consideration.	4. No consideration is necessary.
5. Stamp duty required.	5. No stamp duty is required.

**Managing Director :**

Section 2(26) defines a Managing Director, as a director who by virtue of an agreement with the company or of a resolution passed by the company in general meeting or by its board of directors or by virtue of its memorandum or article of association is entrusted with substantial powers of management which would not otherwise be exercisable by him and includes a director occupying position of a managing director.

**Powers :**

1. To affix the common seal of the company to any document
2. To draw and endorse any cheque.
3. To draw and endorse any negotiable instrument.
4. To sign any share certificate.
5. To direct registration of transfer of any share.

**Disqualifications :** As same as the disqualification of director.

A managing director can be appointed for a term of five years at a time. He can be re-appointed again. He can not hold such office in more than two companies at a time.

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**Auditor :**

A person who is a chartered accountant within the meaning of the chartered accounts act 1949, can act as an auditor of a company.

**Rights, powers and Duties of an auditor :**

1. He has a right of access at all times to the books, accounts and vouchers of the company.
2. He shall report the company's account. The report duly signed and dated by the auditors.

and dated by the auditors.

3. He must be honest and exercise reasonable skill in the discharge of his duties.
4. The auditor has a right to make representations.
5. He is entitled to notices and other communications relating to general meetings of the company.

### **Liabilities of an Auditor :**

1. He is liable to fine.
2. He is liable for any misfeasance and breach of trust.
3. He is liable for prosecution and imprisoned for seven years.
4. He is liable if he passes as good, the ultravires and illegal payments made by the directors.

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### **Unregistered Company :**

It may include large partnerships, associations or companies.

It can be wound up by,

1. By the court,
2. By voluntarily.

It is due to ,

1. Ceased to carry out business,
2. Unable to pay debts,
3. For any just and equitable reasons.

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### **Forged Transfer :**

When shares are transferred by making forged signature, it amounts to null and void. The transferee gets no title to the shares

**Effects :**

1. The rights of the true owner is preserved.
2. True owner must indemnify the company for loss
3. The company is liable for all losses arising out of registration of a forged transfer.

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**Blank transfer :**

Instrument which does not contain the name and signature of the transferee. It may be undated or unstamped at the time of execution. It is legal when article prescribe the transfer in any common form.

Blank transfer must be delivered along with the share certificate, for the purpose of obtaining loan. The lender may complete the blank transfer and get himself registered as member if the share holder fails to repay the loan. A blank transfer facilitates, speculation in shares on stock exchanges. It is not a negotiable instrument and hence can not give better title to the Bonafide purchaser.

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**Statement in lieu of prospectus :**

A public company is not bound to issue prospectus, company had regular purchasers and for then no advertisements are not needed.

If public company having share capital fails to issue prospectus, before allotting shares or debentures atleast 3 days before the first allotment file with the registrar, a statement in lieu of prospectus containing the most of the information of prospectus.

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